

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

DEC

MM Docket No. 96-122

In the Matter of

Amendment of Section 73.202(b). RM-8795
 Table of Allotments,
 FM Broadcast Stations.
 (Riverdale, California)

NOTICE OF PROPOSED RULE MAKING

Adopted: May 17, 1996; Released: June 5, 1996

Comment Date: July 29, 1996

Reply Comment Date: August 13, 1996

By the Acting Chief, Allocations Branch:

1. The Commission considers herein the petition for rule making filed by Happy Nice Valley Broadcasting ("petitioner") requesting the allotment of Channel 252A to Riverdale, California, as that locality's first local aural transmission service. Petitioner stated an intention to apply for the channel, if allotted.

2. Petitioner states that Riverdale (pop. 1,980),¹ is an unincorporated community located in Fresno County, approximately 15 kilometers (9 miles) north of Lemoore, California. Further, petitioner reports that Riverdale contains the following districts: a joint union high school, elementary school, public utilities, irrigation, memorial and fire protection. Additionally, petitioner states that Riverdale contains a library, municipal court, service organizations and several churches.

3. Section 307(b) of the Communications Act of 1934, as amended, requires that the Commission allot channels "... among the several States and communities." The Commission has defined "communities" as geographically identifiable population groupings. Generally, if a community is incorporated or listed in the U.S. Census, that is sufficient to satisfy its status. Absent such recognizable community factors, the petitioner must present the Commission with sufficient information to demonstrate that such a place has social, economic, or cultural indicia to qualify it as a community for allotment purposes. *See, e.g., Oak Grove, Florida*, 5 FCC Rcd 3774 (1990); *Hannibal, Ohio*, 5 FCC Rcd 3315 (1990); and *Statenville, Georgia*, 5 FCC Rcd 2685 (1990). According to the 1990 U.S. Census, Riverdale is attributed with a population of 1,980 and is listed therein as a Census Designated Place ("CDP"). While the Census listing raises a presumption of community sta-

tus, it is not absolute for allotment purposes where the community may be devoid of the customary factors associated with determining community status such as shopping centers, a newspaper, and social or civic organizations. *See, e.g., East Hemet, California, et al.*, 4 FCC Rcd 7895 (1989); *see also, Searles Valley, California*, 3 FCC Rcd 5221 (1988); and *Naples, Florida*, 41 RR 2d 1549 (1977). While we note that the 1995 Rand McNally *Commercial Atlas and Marketing Guide* attributes Riverdale with a post office and a zip code, those factors, while worthy of consideration, are not sufficient to establish "community" status. *See Coker, Alabama*, 43 RR 2d 190 (1978); *see also, Crestview and Westbay, Florida*, 7 FCC Rcd 3059 (1992). In the past, we have rejected claims of community status where a nexus has not been demonstrated between the political, social and commercial organizations and the community in question. *See Gretna, Marianna, Quincy and Tallahassee, Florida*, 6 FCC Rcd 633 (1991) and cases cited therein. Therefore, petitioner is requested to present the Commission with specific information to demonstrate whether Riverdale has any commercial, social, economic, cultural or religious organizations, municipal services, or governmental units that identify themselves specifically with that locality.

4. A staff review of the proposal reveals that Channel 252A can be allotted to Riverdale consistent with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules, provided the transmitter site therefor is restricted to an area at least 10.1 kilometers (6.3 miles) south of the community at coordinates 36-20-39 and 119-53-59, to avoid a short spacing to a minor change application of Station KNAX(FM), Fresno, California, (File No. BPH-941114IB), at coordinates 36-55-48 and 119-38-27.²

5. As the requested allotment could provide a first local aural transmission service to Riverdale, California, we believe it would serve the public interest to solicit comments on the proposal to allot Channel 252A to that locality, in the event it is found ultimately to qualify as a community for allotment purposes. Therefore, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules with respect to Riverdale, as follows:

	Channel No	
City	Present	Proposed
Riverdale, California	--	252A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **July 29, 1996**, and reply comments on or before **August 13, 1996**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary.

¹ Population figures reported herein were taken from the 1990 U.S. Census.

² Channel 252A at Riverdale is short spaced to the allotment site for Channel 250B, Fresno, at coordinates 36-44-09 and

119-47-59, but complies with the requirements of Section 73.207(b) at the licensed site of Station KNAX(FM), Channel 250B, at coordinates 37-04-29 and 119-25-52.

Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

Joe S. Mauk
Happy Nice Valley Broadcasting
365 W. Menlo Avenue
Fresno, CA 93704

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Andrew J. Rhodes
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.